

of 5 U.S.C. 504(b)(1)(B)(i). The adjudicative officer may require an applicant to file additional information to determine the applicant's eligibility for an award.

(b) The net worth exhibit shall describe any transfers of assets from, or obligations incurred by, the applicant or any affiliate, occurring in the one-year period to the date on which the proceeding was initiated, that reduced the net worth of the applicant and its affiliates below the applicable net worth ceiling. If there were no such transactions, the exhibit shall so state.

(c) Ordinarily, the net worth exhibit shall be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the adjudicative officer in a sealed envelope labeled "Confidential Financial Information," accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552, and whether it is covered by the Trade Secrets Act, 18 U.S.C. 1905, or other applicable statutes; why public disclosure of the information would adversely affect the applicant; and why disclosure is not required in the public interest. The material in question shall also be served on counsel representing the agency against which the applicant seeks an award, but need not be served on any other party to the proceeding. If the adjudicative officer finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the Department's established procedures under the Freedom of Information Act, 43 CFR 2.11 *et seq.*

#### **§4.610 Documentation of fees and expenses.**

(a) The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, or project, for which an award is sought.

(b) The documentation shall include an affidavit from each professional firm or individual whose services are covered by the application, stating the actual time expended and the rate at which fees and other expenses were computed and/or charged and describing the specific services performed.

(1) The affidavit shall itemize in detail the services performed by the date, number of hours per date, and the services performed during those hours. In order to establish the hourly rate, the affidavit shall state the hourly rate billed to and paid by the majority of clients during the relevant time periods.

(2) If no hourly rate is paid by the majority of clients because, for instance, the attorney or agent represents most clients on a contingency basis, the attorney or agent shall provide affidavits from two attorneys or agents with similar experience, who perform similar work in the same or similar geographic location, stating the hourly rate which they bill and are paid by the majority of their clients during a comparable time period.

(c) The documentation shall also include a description of any expenses for which reimbursement is sought and a statement of the amounts paid and payable by the applicant or by any other person or entity for the services provided.

(d) The adjudicative officer may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

#### **§4.611 Time for submission of application.**

(a) An application must be filed no later than 30 days after final disposition of the proceeding. Action on an application for an award of fees or

#### **§ 4.612**

other expenses filed prior to final disposition of the proceeding shall be stayed pending such final disposition.

(b) Final disposition means the later of (1) the date on which the final Department decision is issued; or (2) the date of the order which finally resolves the proceeding, such as an order approving settlement or voluntary dismissal.

#### **PROCEDURES FOR CONSIDERING APPLICATIONS**

#### **§ 4.612 Filing and service of documents.**

Any application for an award and any other pleading or document related to an application shall be filed with the adjudicative officer and serve on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 4.609(c) for confidential financial information.

#### **§ 4.613 Answer to application.**

(a) Within 30 calendar days after service of an application, the Department shall file an answer. If the Department fails to answer or otherwise fails to contest or settle the application, the adjudicative officer may, upon a satisfactory showing of entitlement by the applicant, make an award for the applicant's fees and other expenses under 5 U.S.C. 504 in accordance with § 4.616.

(b) If the Department and the applicant believe that they can reach a settlement concerning the award, the Department and the applicant may jointly file a statement of their intent to negotiate. The filing of such a statement shall extend the time for filing an answer for an additional 30 days from the date of filing of the statement. Further extensions may be granted by the adjudicative officer upon the joint request of the Department and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on to support the objection. If the answer is based on any alleged facts not already reflected in the record of the proceeding, the Department shall include with the answer either a supporting af-

#### **43 CFR Subtitle A (10-1-02 Edition)**

fidavit or a request for further proceedings.

#### **§ 4.614 Settlement.**

An applicant and the Department may agree on a proposed settlement of an award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded. If the applicant and the Department agree on a proposed settlement of an award before an applicant has been filed, the application shall be filed with the proposed settlement.

#### **§ 4.615 Extensions of time and further proceedings.**

(a) The adjudicative officer may on motion and for good cause shown grant extensions of time other than for filing an application for fees and expenses after final disposition in the adversary adjudication.

(b) Ordinarily, the determination of an award will be made on the basis of the written record of the underlying proceeding and the filings required or permitted by the foregoing sections of these rules. However, the adjudicative officer may, *sua sponte*, or on motion of any party to the proceedings require or permit further proceedings, such as informal conferences, oral argument, additional written submissions or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application and shall be conducted as promptly as possible. A motion for further proceedings shall specifically identify the information sought on the disputed issues and shall explain why the further proceedings are necessary to resolve the issues.

#### **§ 4.616 Decision on application.**

The adjudicative officer shall promptly issue a decision on the application which shall include proposed written findings and conclusions, and the reasons or basis therefore, on such of the following as are relevant to the decision:

(a) The applicant's status as a prevailing party;